

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**MEDICAL LIABILITY MUTUAL
INSURANCE COMPANY**

PLAINTIFF

VS.

CASE NO. 4:05CV001319 JMM

**ALAN CURTIS, L.L.C., D/B/A
CRESTPARK OF MARIANNA, INC., ET AL.**

DEFENDANTS

ORDER

On March 21, 2007, defendants filed a Motion for Reconsideration contending that the Court erred in finding that plaintiff had no duty to defend any claims against Alan Curtis and the Court's decision in the instant case was conflict with United States District Judge E. Thomas Eisele's decision in *Medical Liability Mutual Insurance Company v. Alan Curtis Enterprises, Inc., et al.*, No. 4:05CV01317, 2006 WL 3542986 (E.D. Ark. Dec. 8, 2006).

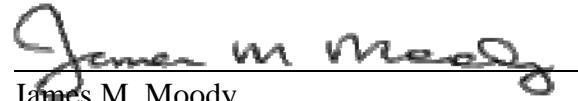
The Court has reviewed the Fourth Amended Complaint in the underlying lawsuit in state court and finds that it does not assert a breach of contract claim against Alan Curtis. Thus, plaintiff does not have a duty to defend Alan Curtis in the underlying lawsuit.

Moreover, the Court has reviewed the decision by Judge Eisele and finds that this Court's Order of March 7, 2007, is not in conflict with Judge Eisele's Order in *Medical Liability Mutual Insurance Company v. Alan Curtis Enterprises, Inc., et al.*, No. 4:05CV01317 (E.D. Ark. Dec. 8, 2006). Judge Eisele held that Alan Curtis Enterprises, Inc., was covered by the policies because Alan Curtis Enterprises, Inc., was acting on Evergreen's behalf and because of policy language regarding the payment of damages assumed under a contract.

The Court agrees with Judge Eisele, and finds that for the same reasons supporting plaintiff's duty to defend Alan Curtis Enterprises, Inc., Alan Curtis would be entitled to a defense on the claims against him. The claims against Allen Curtis in the underlying lawsuit are (1) violation of the Arkansas Long Term Care Residents Rights Act; (2) negligence based upon violation of regulations;(3) common law negligence; and (4) wrongful death. All of these claims were found not to be covered under the policies. *See Medical Liability Mutual Insurance Company v. Alan Curtis L.L.C., D/B/A Crestpark of Marianna, Inc., et al.*, No. 4:05CV01319 (E.D. Ark. March 7, 2007). Because these are the only claims against Alan Curtis, there is no duty to defend.

The Motion to Reconsider is denied (#97).

IT IS SO ORDERED THIS 29 day of March, 2007.



James M. Moody
United States District Court